

To: Johnson, Barnes[Johnson.Barnes@epa.gov]
Cc: Brent, Sharon[Brent.Sharon@epa.gov]; Huggins, Richard[Huggins.Richard@epa.gov]; Nisbett, Deana[Nisbett.Deana@epa.gov]; Smidinger, Betsy[Smidinger.Betsy@epa.gov]; Young, Jessica[Young.Jessica@epa.gov]
From: Armstead, John A.
Sent: Tue 1/14/2014 2:00:38 PM
Subject: RE: Straw Agenda - Region 3 State Director's Caucus/West VA Response

Thanks Barnes for the assist with the Region 3 State Directors meeting. Between you and Carolyn we are hopeful the secure the space we need at PY. Our State Directors are looking forward to the opportunity to engage ORCR and OUST to both share their experience and gain insight to the national program.

To your second inquiry, here's our input to the EPA RCRA authority question (working in consult with ORC):

RCRA

RCRA Section 7003

- [REDACTED] EPA may issue an order as necessary to protect public health and the environment, or may bring an action in federal court, to address the past or present handling, storage treatment transportation or disposal of any solid waste or hazardous waste that may present an ISE.
- [REDACTED] Action may be taken against any person who is contributing or has contributed to such handling, etc., to restrain such activities and take any other necessary action.
- [REDACTED] Under Section 7003, the statutory (and not the narrower regulatory) definitions of "solid waste" and "hazardous waste" apply. The material that leaked at the Freedom Industries facility appears to have been a "product" and NOT a solid waste or hazardous waste, however, once the material has been released into the environment it is a solid waste (and, possibly, a hazardous waste) which may be addressed under Section 7003.

RCRA Section 3013

- [REDACTED] EPA may issue an order to the owner or operator of a facility or site in the event that either: (a) the presence of hazardous waste at a facility of site at which hazardous waste has been stored, treated or disposed of, or (b) the release of such hazardous waste from a facility or site, may present a substantial hazard to human health or the environment.
- [REDACTED] The order may require monitoring, testing, analyses and reporting with respect to such facility or site as EPA deems reasonable to ascertain the nature and extent of such hazard.

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As with Section 7003, under Section 3013, the statutory (and not the narrower regulatory) definitions of “solid waste” and “hazardous waste” apply.

- In certain circumstances, EPA may perform the activities described in Section 3013 and recover the costs thereof from the current or prior owner or operator.

RCRA Subtitle C regulatory authorities

- It appears that the material that leaked at the Freedom Industries facility was a “product” and NOT a “solid waste” or “hazardous waste” as those terms are defined in the RCRA Subtitle C regulations, and thus its storage on-site is not subject to EPA’s regulatory authorities under RCRA Subtitle C.

John A. Armstead, Director

Land and Chemicals Division (3LC00)

215-814-3100 (o)

Leadership - Commitment - Determination

for

A Safe, Clean, and Sustainable Future

From: Johnson, Barnes

Sent: Tuesday, January 14, 2014 8:28 AM

To: Armstead, John A.

Cc: Brent, Sharon; Huggins, Richard; Johnson, Barnes; Nisbett, Deana; Smidinger, Betsy; Young, Jessica

Subject: RE: Straw Agenda - Region 3 State Director's Caucus/West VA Response

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Dear John,

Thanks for the invitation. I have added it to my calendar and have shared this with the ORCR management team. We will look forward to participation. I believe that Carolyn has hooked you up with the appropriate folks for reserving rooms. As you know from our last meeting finding meeting space is a huge issue here at PY. I see that you are planning breakout sessions too. I am not sure how big the groups will be but we also have some relatively large conference rooms available (like the one we used for the DDs in Nov) that are more under our control. Deana Nisbett is a point of contact in ORCR if you need any additional help with conference room scheduling.

One more question,

While I have you, yesterday at the Agency senior staff meeting Shawn spent some time discussing the coal cleaning chemical spill in WV. One of the issues that was raised was "RCRA authority". I sort of off the cuff was guessing that 7003 would certainly apply – a solid waste presenting an imminent and substantial endangerment, but I really do not know what the precise question is. I am guessing that the R3 ORC is handling this but it would be great if you could share any RCRA related authority questions that are kicking around related to this. Thanks!

Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |
johnson.barnes@epa.gov

From: Armstead, John A.
Sent: Wednesday, January 08, 2014 10:29 AM
To: Hoskinson, Carolyn; Johnson, Barnes
Cc: rogers, rick; Libertz, Catherine; Hodgkiss, Kathy
Subject: Straw Agenda - Region 3 State Director's Caucus

Carol and Barnes,

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Carol and Barnes,

I want to share with you a really rough draft of our planned R3 State Director's Caucus which is being planned for March 25-26, 2014 at the Potomac Yards facility. We hope to take advantage of the proximity with HQ to invite you and your staff to participate. As the meeting topics are developed we'll share them with you to assist you in identifying staff most appropriate to contribute to the dialogue. Rick Rogers is on point for my office and may be contacted for more specific information (215-814-5711). I hope you will be able to join us for at least the opening sessions.

John A. Armstead, Director

Land and Chemicals Division (3LC00)

215-814-3100 (o)

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